



OFFICE OF THE
COMMISSIONER OF RAILROADS
STATE OF WISCONSIN

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June 18, 2014

9164-RX-789

Re: Petition of the Wisconsin Department of Transportation for a Determination of the Adequacy of Warning Devices and the Alteration and Exemption of the Public Crossing of the Wisconsin Central Ltd. Tracks with Post Road (Business 51) in the Village of Plover, Portage County

To The Person Addressed:

Enclosed with this letter you will find the Proposed Decision of the Hearing Examiner. This proposed decision is the hearing examiner's recommendation and not the final decision of the Commissioner of Railroads. The Commissioner will issue a final decision only after considering any written comments on the proposed decision.

Comments, either in support or in opposition, must be filed in writing in time to reach the Office of the Commissioner of Railroads (OCR) not later than 15 days from the date of this letter. One copy of the comments must be filed with the OCR and one copy served by regular mail or in person upon each party of record. Generally, "parties" include those persons and organizations listed in the "Appearance" section of the proposed decision (but not including any members of the OCR staff).

This 15-day period is your opportunity to file any comments on the proposed decision. Comments need not follow any particular format nor do they need to be elaborate. A clear, concise and specific explanation of your comments is sufficient and helpful. Short extensions may be granted upon request in writing or by telephone.

Sincerely,

Douglas S. Wood, Hearing Examiner
Enclosure

9164P789/dw

BEFORE THE OFFICE OF THE COMMISSIONER OF RAILROADS

STATE OF WISCONSIN

In the Matter of the:

Petition of the Wisconsin Department of Transportation for a Determination of the Adequacy of Warning Devices and the Alteration and Exemption of the Public Crossing of the Wisconsin Central Ltd. Tracks with Post Road (Business 51) in the Village of Plover, Portage County

9164-RX-789

PROPOSED DECISION

By letter dated September 27, 2012, the DOT petitioned the Office of the Commissioner of Railroads (OCR) pursuant to Wis. Stat. §§ 195.28, 195.285 and 195.29 for a determination of the adequacy of warning devices and the alteration and the exemption of a public crossing of the Wisconsin Central Ltd. (WCL) tracks with Post Road (Business 51) in the Village of Plover, Portage County (Crossing no. 281 493N / MP 81.27).

Pursuant to due notice, a public hearing was held in this matter on May 31, 2013 in Plover, Wisconsin with hearing examiner Douglas S. Wood presiding.¹

Appearances:

Parties

Wisconsin Department of Transportation, Petitioner
by
Lisa Stern, PE
Grade Crossing Safety Engineer
PO Box 7914
Madison, WI 53707-7914

Wisconsin Department of Transportation, Petitioner
by
Mark Morrison, PE
Traffic Operations & Safety Engineer
4802 Sheboygan Avenue, Room 501
Madison, WI 53705-2927

As Interest May Appear:

Wisconsin Central Ltd.
by
Jackie Macewicz
Manager Public Works
1625 Depot Street
Stevens Point, WI 54481

¹ The OCR now publishes all notices, orders, proposed decisions and final decisions on the Internet. These documents may be accessed at either <http://ocr.wi.gov/apps40/dockets/default.aspx> or on the Public Service Commission's website at <http://psc.wi.gov/>

PROPOSED FINDINGS OF FACT

The Wisconsin Department of Transportation and the Village of Plover propose to reconstruct Post Road (Business 51), from Green Drive to Springville Drive, in the Village of Plover. As part of that project DOT and the Village propose to alter the highway/rail crossing of Post Road (Business 51) with the Wisconsin Central Ltd. tracks. The project would change Post Road (Business 51) from a 4-lane undivided urban arterial to a 4-lane divided urban arterial with a raised median.

The project is needed because the existing 4-lane undivided roadway cross-section no longer safely and efficiently accommodates the existing and forecasted traffic volumes on Post Road (Business 51). The facility lacks multi-modal services and the lack of a center pedestrian refuge makes it difficult for pedestrians to cross at non-signalized intersections. There are currently no bicycle accommodations in either direction along Post Road (Business 51).

Post Road (Business 51) currently consists of a four-lane undivided urban roadway with 11'-wide travel lanes and 30-inch curb and gutter. The roadway has 5'-wide sidewalks on each side located 4' behind the back of curb. The crossing consists of one mainline track. The crossing is located 300' north of Willow Drive and 350' south of Chestnut Drive.

After the project Post Road (Business 51) will be a four-lane divided urban roadway with a raised median. The roadway section for northbound travel will include two 12'-wide travel lanes, a 6'-wide bicycle lane and 30-inch curb and gutter. The southbound roadway will also consist of 12'-wide travel lanes, a 6'-wide bicycle lane and 30-inch curb and gutter. The northbound and southbound roadways will be separated by a 24'-wide raised median with 30-inch curb and gutter on both sides. There will be 6'-wide sidewalks on each side of the roadway located 7' 3" behind the face of curb.

The track and roadway will continue to meet at an angle of approximately 86°. The crossing is the high point of the roadway grade with a 0.51% grade approach on the south side of the track and 0.36% approach on the north side of the track. DOT proposes to have the crossing at the same elevation as it currently exists due to the urban conditions, but a small track raise could be accommodated.

Post Road (Business 51) carried about 11,300 ADT (average daily traffic) including 6.8% trucks in 2011. The Wisconsin Department of Transportation projects Post Road (Business 51) will carry between 15,350-16,750 ADT in the design year of 2035. The speed limit is 30 mph. The speed limit will remain the same after the project.

The railroad currently operates 2 through trains and 4 switching movements per day over the crossing at a speed of 10 mph.

A driver traveling at 30 mph needs a distance of 231' to stop safely. The crossing warning devices will be visible from more than 1000' in each direction. The stopping sight distance will be adequate.

Assuming a train speed of 10 mph, a driver traveling at 30 mph needs to see a train when it is 100' from the crossing from a point 231' down the highway. The sight distance available in each quadrant from the safe stopping distance is as follows: 90' in the northwest quadrant, 150' in the northeast quadrant, 120' in the southwest quadrant and 20' in the southeast quadrant. The corner sight distance is inadequate in the southeast and northwest quadrants. The project will improve the corner sight distance to 350' in the northwest quadrant and 410' in the southeast quadrant.

At all crossings, except those with gates, a driver stopped 15' short of the near rail must be able to see far enough down the track, in both directions, to determine if sufficient time exists for moving their vehicle safely across the tracks to a point 15' past the far rail, prior to the arrival of a train. Required clearing sight distance along both directions of the track, from the stopped position of the vehicle, is dependent upon the maximum train speed and the acceleration characteristics of the "design" vehicle. The necessary clearing sight distance at the Post Road

(Business 51) crossing is 225'. The available clearing sight distance is 120' in the southeast quadrant and at least 350' in each of the other quadrants. The clearing sight distance is inadequate in the southeast quadrant.

Five train-vehicle accidents have occurred at this crossing since 1973. The crashes occurred in 1973 (2), 1974, 1981, and 1990.

The existing warning devices consist of rotatable cantilevered flashing-light signals installed in 1992 and 12" LED lamp units installed around 2005. The circuitry is motion detection. The warning devices should be upgraded. DOT recommended upgrading the warning devices to include walkout cantilevered 12" LED flashing-light signals with gates behind the outside curb and mast-mounted 12" LED flashing-light signals with gates in the median. DOT will use project funds to pay for the upgrade to the crossing warning devices.

In summary, the alteration of the crossing at-grade of the Wisconsin Central Ltd. tracks with Post Road (Business 51) will promote public safety and convenience by improving the vehicle ride at the crossing, upgrading the crossing warning devices, adding a raised median to provide a safe refuge for pedestrians and bicyclists and deter motorists from driving around the gates at the crossing, improving corner sight distance, and improving safety and efficiency for bicycles by providing on-street bike accommodations.

Exempt crossing

The DOT proposes to exempt the Post Road (Business 51) crossing from the stopping requirement of Wis. Stat. § 346.45, which requires certain specified vehicles, such as motor buses transporting passengers, motor vehicles transporting chlorine, fuel trucks, and vehicles transporting hazardous materials, to stop at all highway/rail crossings unless posted with an exempt sign

Although the notice of hearing correctly stated that the DOT's petition included the exemption of the crossing, the DOT neglected to submit testimony on that issue. DOT subsequently submitted supplemental testimony (from a DOT employee who testified under oath at the hearing). While expressing reservations about the admission of this testimony, the WCL agreed to waive any evidentiary objection it may have had.

After the project construction, the Post Road (Business 51) crossing will have cantilevered and median mast-mounted automatic flashing lights with gates. Train traffic is infrequent and low speed, while the roadway carries a relatively large volume of traffic, including almost 7% trucks. Exempting the vehicles identified in Wis. Stat. § 346.45 from the stopping requirement will promote the public interest, particularly in light of public safety. Unless the crossing is exempted, there will be frequent conflicts between vehicles required to stop and all other highway traffic.

The order requires the DOT to install exempt signs [Sign R15-3P in the Manual on Uniform Traffic Control Devices (MUTCD)] on the vertical signal posts on each approach. The order also requires the DOT to install yellow-background advance warning exempt signs on the advance warning signs on the approaches to the crossing.

Source of funding:

Warning devices. The signal materials and installation shall be paid by the highway project.

Crossing Construction Costs. The existing crossing surface is 58' long measured perpendicular to the roadway centerline. With the proposed roadway, the new crossing surface will need to be 117' long. Under Wis. Stat. § 86.12, the railroad is responsible for maintaining the existing crossing. When roadway projects widen a crossing the OCR apportions the cost of reconstructing the crossing on a pro-rated basis with railroad being responsible for the existing length and the roadway authority for the added length.

In this case, pursuant to Wis. Stat. § 86.13(5), DOT proposed to fund 85% and the WCL 15% of the existing crossing length with DOT funding 100% of the additional length needed. Under that proposal, DOT would pay for

93% and the WCL 7% of the crossing construction costs.

However, DOT proposed that the crossing surface be constructed with concrete panels. The railroad proposed to install composite crossing panels. Composite crossing panels are a proprietary product with a sole-source provider. The Federal Highway Administration (FHWA) generally will not allow the use of products with a single source due to lack of competitive bidding. Because this is a federally-funded project, DOT cannot reimburse the railroad for any of the costs for the composite panels.

The railroad indicated it might prefer to pay for the composite crossing panels with the remaining costs of the crossing construction being split 93% to DOT and 7% to the railroad. The OCR has no objection to either a concrete panel or composite panel crossing surface. The order gives the railroad the option of installing either material with the understanding that the railroad will have to pay for the composite panels if it chooses to install them rather concrete panels.

Timing: DOT requested that the OCR order the railroad to complete the crossing work by June 1, 2016 and the signal work by October 1, 2016. DOT also requested that the OCR order the installation of temporary signals by reference to the construction staging plan. The **proposed** order incorporates the staging plan by reference rather than listing the work required in each stage.

PROPOSED ULTIMATE CONCLUSIONS ON THE ISSUES

1. That the alteration of the crossing at-grade of Post Road (Business 51) with the Wisconsin Central Ltd. tracks in accordance with the design plans of the Village of Plover in the Village of Plover, Portage County will promote public safety and convenience.
2. That in order to adequately protect and promote public safety, it is necessary to install and maintain cantilevered and mast-mounted 12" LED automatic flashing lights with gates.
3. That it would promote the public interest to exempt the crossing of Post Road (Business 51) with the tracks of the Wisconsin Central Ltd. from the stopping requirement of Wis. Stat. § 346.45.
4. That it is reasonable that the Wisconsin Central Ltd. bear 7% part of the cost for the crossing construction.

PROPOSED CONCLUSION OF LAW

That the Office of the Commissioner of Railroads has jurisdiction under Wis. Stat. §§ 195.28, 195.285 and 195.29 and the Office enters an order consistent with the findings of fact.

PROPOSED ORDER

The hearing examiner recommends:

1. That the **Wisconsin Central Ltd.** shall install and maintain a crossing at-grade of **Post Road (Business 51)** with its tracks in accordance with the design plans of the Village of Plover in the Village of Plover, Portage County by **June 1, 2016** (Crossing No. 281 493N / MP 81.27).
2. That the **Wisconsin Central Ltd.** shall install and maintain cantilevered 12" LED

automatic flashing lights with gates behind the outside curb and mast-mounted 12"LED automatic flashing lights with gates in the median and other appropriate appurtenances in accordance with such plans as are filed with and approved by the Office of the Commissioner of Railroads at the crossing of its tracks with **Post Road (Business 51)** at-grade in the Village of Plover, Portage County by **October 1, 2016** (Crossing No. 281 493N / MP 81.27).

3. That the **Wisconsin Central Ltd.** shall install and maintain temporary signals in accordance with the staging plan established by the Wisconsin Department of Transportation as set forth on page 4 of OCR Hearing Exhibit No. 1 (testimony of Don Penzkover) and the attachment to that testimony identified as "Exhibit B".

4. That the **Wisconsin Central Ltd.** shall submit to the Office of the Commissioner of Railroads signal and circuit plans with the cost estimate of its proposed installation and upon completion of the signal project, a detailed statement of the actual cost to the Office and to the Wisconsin Department of Transportation.

5. That the signal installation work herein ordered shall not begin until the regional office of the Wisconsin Department of Transportation informs the railroad that they may start such work and such start notice will not be issued until appropriate federal aid or other funding arrangements have been assured. The cost of the new project initiated before the start notice will not be reimbursed with public funds and shall be the responsibility of the railroad.

6. That the **Wisconsin Central Ltd.** shall notify the Office of the Commissioner of Railroads upon completion of the signal project.

7. That to the extent feasible the **Wisconsin Central Ltd.** shall re-use the existing signal equipment.

8. That the **Wisconsin Department of Transportation** shall install and maintain exempt signs (Sign R15-3P in the MUTCD) on the signal masts on each approach to the crossing of **Post Road (Business 51)** with the Wisconsin Central Ltd. tracks in the Village of Plover, Portage County by **October 1, 2016** (Crossing No. 281 493N / MP 81.27).

9. The **Wisconsin Department of Transportation** shall also install and maintain yellow-background advance warning exempt signs (Sign W10-1aP in the MUTCD) on the advance warning signs on each approach to the crossing by **October 1, 2016** (Crossing No. 281 493N / MP 81.27).

10. That the **Wisconsin Central Ltd.** shall bear no part of the cost of the crossing signal materials or installation.

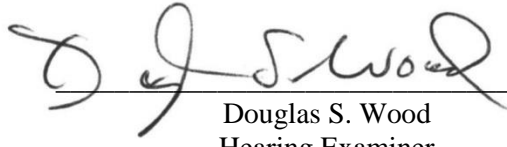
11. That the **Wisconsin Central Ltd.** shall bear 7% of the cost of the crossing construction, provided that if the **Wisconsin Central Ltd.** elects to install composite panels it shall bear the entire cost of the composite panels and 7% of the remaining crossing construction costs.

12. That notwithstanding any other cost apportionment in this order, the Wisconsin Central Ltd. shall bear any cost assessed to the railroad pursuant to Wis. Stat. § 195.60 for the investigation of this matter by the Office. The railroad shall not pass on those assessment costs either directly or indirectly.

13. That jurisdiction is retained.

Dated at Madison, Wisconsin, June 18, 2014.

By the Office of the Commissioner of Railroads.



Douglas S. Wood
Hearing Examiner

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